(e) the court regards it as immoral, or opposed to public policy.

In each of the above cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.

In the instant case, neither Metroplex nor Dr Iaduray nor Dr Mathew Sebastian had the licence to sell or dispose or purchase X-ray apparatus and it follows that the equipment lease agreement and its assignment to Dr Mathew Sebastian were in contravention of the said 1968 Act.

In *Re Onslow, ex p Kibble*,[5] Sir WM James LJ said:

I am of the opinion that the decision of the Registrar in this case was quite right. It is the settled rule of the Court of Bankruptcy, on which we have always acted, that the Court of Bankruptcy can inquire into the consideration for a judgment debt. There are obviously strong reasons for this, because the object of the bankruptcy laws is to procure the distribution of a debtor's goods among his just creditors. If a judgment were conclusive, a man might allow any number of judgments to be obtained by default against him by his friends or relations without any debt being due on them at all; it is therefore necessary that the consideration of the judgment should be liable to investigation. In the present case a bill of exchange had been drawn by an infant for jewellery purchased and money advanced to him. It is not pretended that there was any ratification of the original debt or of the bill of exchange after the infant came of age, until the judgment was allowed to go by default against him, under the Bills of Exchange Act. The only question, therefore, is whether the consideration for the judgment has not been taken away by the Infants' Relief Act, 1874. The first section enacts that all contracts thenceforth entered into by infants shall be absolutely void; and then the second section provides that no action shall be brought upon any promise made after full age to pay any debt contracted during infancy, or upon any ratification made after full age of any promise or contract made during infancy. When the Act says that no action shall be brought, it must mean that the promise or ratification shall not be a good cause of action: so that a ratification made after the Act of a contract made in infancy before the Act is as void as a contract made by an infant after the Act. Therefore, on this ground, I think the Registrar came to a right conclusion.

It follows, accordingly, in my judgment that the court should inquire even at this late hour into the consideration for the judgment and having done so it is my judgment that the consideration is bad and it follows that a bankruptcy founded on ana ct of bankruptcy based on liability based on such a judgment should not be allowed to stand and, exercising my power of review pursuant to s 92, I would and do set aside the receiving and the adjudication orders made on 7 December 1988 in respect of Dr Mathew Sebastian.

Application allowed.

Solicitors: *Suhaimi Khor Zulkifli & Chang; Siva Ram & Associates.*

Reported by *PS Ranjan*

Lim Seong Choon & Anor v R Rayaratnam

HIGH COURT (PENANG) — CIVIL APPEAL NO 11-4-87
MOHAMED DZAIDDIN J
11 APRIL 1990

Tort — Damages — Special damages — Road accident — Claim for depreciation in value of car — Interest on special damages — Principles applicable

The plaintiff (respondent) claimed damages against the defendants for negligence arising out of a motor accident. One item of special damages was a claim for depreciation of the plaintiff's car in the sum of $1,000. At first instance, the magistrate allowed this claim and further awarded interest on special damages at 8% pa from the date of accident to the date of realization. The defendants (appellants) appealed against this award.

Held, allowing the defendants' appeal:

(1) The plaintiff can recover under special damages for diminution in value of his car but it is essential that appropriate evidence be called to prove it.

(2) In the present case, there was scanty and insufficient evidence for the learned magistrate to make such a finding. First, there was no evidence whether the car was a fairly new or an old car. Secondly, it was not enough to rely on the adjuster's report, which was submitted to the insurance company for the purpose of assessing the estimated cost of repair of the vehicle as a basis for arriving at the loss of the market value of the car. Further, it was sheer guess work to award $1,000 as compensation for the reduction in value of the car.

(3) Special damages may be fairly averaged out at half the usual rate of interest from the date of the accident to the date of judgment. As the conventional rate of interest permitted by the courts is 8% pa, the correct rate payable on special damages must be at 4% and not 8% pa from the date of accident until the date of judgment, and only thereafter would he be entitled to 8% pa.

Cases referred to

1 *Admiralty Comrs* v *SS Susquehanna* [1926] AC 655 (folld)
2 *Payton* v *Brooks* [1974] 1 Lloyd's Rep 241 (folld)
3 *Jefford* v *Gee* [1970] 1 All ER 1202 (folld)

M Thayalan for the plaintiff.
PR Manecksha for the defendants.

Cur Adv Vult

Mohamed Dzaiddin J: On 27 June 1984, the plaintiff's car was damaged in a collision with a car driven by the second defendant, the servant or agent of the first defendant. The plaintiff (respondent) issued the summons in the magistrate's court on 16 December 1985 claiming only for special damages against both defendants (appellants) on account of the second defendant's negligence. Under the 'Particulars of Special Damages' the plaintiff claimed, inter alia, a sum of $1,000 for depreciation. On 6 January 1987, the learned magistrate found the defendants wholly to blame and gave judgment for the plaintiff as prayed, including the sum of $1,000 for depreciation. She also awarded interest on special damages at 8% pa from the date of accident to the date of realization.

The defendants, being dissatisfied with the decision of the learned magistrate, appealed to this court against the award of $1,000 for depreciation and interest on special damages assessed at 8% pa from date of accident to the date of realization. I allowed this appeal on both grounds with costs.

On the first ground, one can assume that what the plaintiff means by depreciation in his statement of claim is the diminution in value of his car as a result of the damage due to the collision. It is a well settled principle that the onus is on the plaintiff to prove special damages strictly. In *Admiralty Comrs* v *SS Susquehanna*,[1] at p 661 Viscount Dunedin stated:

> If there be any special damage which is attributable to the wrongful act, that special damage must be averred and proved and, if proved, will be awarded.

Now, what was the evidence before the magistrate on the question of diminution in value? The plaintiff, an engineer, testified that his car was wholly damaged as a result of the accident. His repairer had to get spare parts from Ipoh. He himself had to do further repairs and had to change the absorber. Based on the plaintiff's evidence, coupled with the adjuster's report, the learned magistrate in giving her reason for the award concluded that 'tiap-tiap kereta yang mengalami kerosakan akibat kemalangan akan jatuh nilainya kerana keadaan kereta itu tidak sama lagi seperti sebelum kemalangan berlaku'. (That every car which was damaged after an accident would lose its value because the condition of the said car would no longer be the same as before the accident.)

In *Payton* v *Brooks*,[2] the plaintiff's car, only four weeks old was damaged by the defendant. He claimed from her not only the cost of repairs but also a sum of $100 being the estimated loss of market value of the car, even after repair due to it being a repaired car. The trial judge awarded only the cost of repair, finding on the evidence that no diminutive in market value had been established by the plaintiff. On appeal, it was held that the judge's finding of fact must be accepted, but as obiter, if the judge had found that the diminution in value had been established the plaintiff would have been entitled to an award. The Court of Appeal went on to state that the normal measure of damages is the cost of repair but if, despite good repairs, the reduced market value can be proved, compensation for the reduction can be awarded to the plaintiff, the value of his property as a saleable asset having been reduced.

Following *Payton* v *Brooks*,[2] I am satisfied that the learned magistrate had erred in law in awarding the plaintiff $1,000 for the depreciation. Granted that the plaintiff can recover under special damage for diminution in value, yet, in my opinion, it is essential that appropriate evidence be called to prove it. Here, I find there was scanty and insufficient evidence for the learned magistrate to make her finding. First, there was no evidence whether the car was a fairly new or an old car. Secondly, it was not enough for her to rely on the adjuster's report, which was a report submitted to the insurance company for the purpose of assessing the estimated cost of repair of the said vehicle, as a basis for arriving at the loss of the market value of the said car. Further it is sheer guess work for her to award $1,000 as compensation for the reduction in value of the said car. Thus, on the question of evidence and the burden of proof required, for my part, I would follow and adopt the decision of Roskill LJ at p 245:

> In a case where the evidence justifies a finding that there has been, on top of the cost of repairs, some diminution in market value — or, to put the point another way, justifies the conclusion that the loss to the plaintiff has not been fully compensated by the receipt of the cost of complete and adequate repairs, because of a resultant diminution in market value — I can see no reason why the plaintiff should be deprived of recovery under that head of damage also.
>
> I would only add one word of caution. This conclusion is not a charter under which infuriated plaintiffs, who have the misfortune to have their cars damaged by careless drivers, acquire an unfettered right to recover diminution of value in every case in addition to the cost of repairs. *It is essential in such a case,* in my judgment, *for appropriate evidence to be called to prove diminution in value. I do not think in the ordinary case the burden of proof which rests on the plaintiff would be discharged merely by calling an individual to prove his idiosyncratic view of the particular loss in a particular case. The diminution in market value must be proved by appropriate evidence of the kind usually called when diminution in market value is sought to be proved as a head of damage.* Subject to that qualification, it seems to me that this head of damage is recoverable. (The emphasis is mine.)

On the question of interest on special damages, it has been clearly established in *Jefford* v *Gee*,[3] which has been piously followed by our courts, that special damages may be fairly averaged out at half the usual rate of interest from the date of the accident to the date of judgment. As the conventional rate of interest permitted by our courts is 8% pa, the correct rate payable on special damages must be at 4% and not 8% pa from date of accident until date of judgment and only thereafter would he be entitled to 8% pa until realization.

The deposit paid for this appeal shall be refunded to the defendants.

Appeal allowed.

Solicitors: *V P Nathan & Partners; Mohideen & Asamaley.*

Reported by *Azra Moiz*